(Testimony of Henry Lester Pineda.)

Q. Do you recall at that time if certain cases contained any indication of the eggs which were in those cases?

A. Well, the medium case of eggs.

Q. Were any cases other than mediums pushed out from the candling [361] booth?

A. Yes, we had Pee-wees coming out.

Q. Do you recall any mark on those Pee-wee cases.

A. Well, the girls would put a little card saying what type of eggs is was, as they do in most of the cutouts they wanted to be nailed up.

Mr. Hippeli: At this time the Government will offer for identification a small card containing the written word, "Pee-wee", on the card.

The Court: It may be admitted and marked for purpose of identification.

(The card was thereupon marked U. S. Exhibit 35 for Identification.)

Mr. Hippeli: Q. I will show you U. S. 35 For Identification and ask you if that card is similar to the Pee-wee cards which the candlers at Nye & Nissen on this particular occasion placed on cases of Pee-wee eggs which were returned to you from the candling room?

A. Yes, the girls would have similar cards of this size or smaller, whichever card they had available, and they write "Pee-wee" on them, and when they shove the cases out, the case is to be nailed right away, we take this card and put it right back on the case, as she was pulling it, or she could

(Testimony of Henry Lester Pineda.)

us this card later on on a different case of Pee-wees.

Q. Directing your attention on this particular occasion to the inside of the candling room, near a candling light, do you recall where cards similar to that may have been kept?

A. These [362] cards are kept usually where the girl works on the inside. They have these cards right up sort of on a level with the light. They have a little place there where they would keep their purses, the cards and so on.

Q. What did they do with those cards?

A. By giving them back to them, instead of throwing them away they save time looking around for some. When they get them back they put them on the shelf again.

Q. What do they do with them when they put them on the shelf?

A. Put them on an order which they get.

Q. That is, the eggs, you say, would be pushed out to you? A. Yes.

Q. When you received that case of eggs what would you do with that case?

A. Well, in this particular instance we take these off and put it back on the case and nail up this case of Pee-wees and make dumps of them, set them along the wall five high.

Q. What label did you put on such cases?

A. We put on mediums—green label, rather.

Q. Was any stamp placed on that green label at that time?

(Testimony of Henry Lester Pineda.)

A. No, not at this time. At this time I would write a little "P" on it in pencil.

Mr. Hippeli: I have a series of cards I would like to show him. They are all similar. I guess I should do it similarly for the purpose of the record. The Governor offers for [363] identification another card containing the written word, "Pee-wee" and offers this for identification.

The Court: It may be admitted and marked.

(The card was thereupon marked U. S. Exhibit 36 for Identification.)

Mr. Hippeli: The Government also offers another small card marked "Pullets" for identification.

The Court: It may be admitted and marked.

(The card marked "Pullets" was marked U. S Exhibit 37 for Identification.)

Mr. Hippeli: The Government also offers in evidence another small card marked "Pullets" for identification.

The Court: How are you going to designate between those two groups?

Mr. Hippeli: Pullets and Pee-wees?

The Court: No; there are two "Pullets" there, aren't there?

Mr. Hippeli: By the number on them, your Honor, they are identification.

The Court: Very well.

(The card marked "Pullets" was marked U. S. Exhibit 38 for Identification.)

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: We next offer another card marked "Pullets" for identification.

(The card was marked U. S. Exhibit 39 for Identification.)

Mr. Hippeli: The Government next offers a card on which is [364] written "Candled Pullet" for identification.

(The card was thereupon marked U. S. Exhibit 40 for Identification.)

Mr. Hippeli: The Governor next offers a small card on which is written the word "Pee-wee" for identification.

(The card was thereupon marked U. S. Exhibit 41 for Identification.)

Mr. Hippeli: The Government next offers a small card upon which is written the word "Pee-wee" for identification.

The Court: It may be admitted and marked.

(The card was marked U. S. Exhibit 42 for Identification.)

Mr. Hippeli: I will show you U. S. Exhibits Nos. 35 to 42 for Identification and ask you to examine each of them, please. Are each of these cards, being Exhibits 35 to 42 for Identification, cards similar to those which you found in cases of eggs at the time just referred to?

A. Yes.

Q. Directing your attention to U. S. 42 for Identification, I will ask you if you are familiar with from what that was obtained?

(Testimony of Henry Lester Pineda.)

A. Pee-wee?

Q. No, what was the card torn from, do you know?

A. This is from what they call the filler in the bottom where you place the eggs, the bottom of the cases or flat or nape, and then the different compartments is made up of this type of cardboard that they call fillers, and then this is taken off and torn in each separate cut there. [365]

Q. Directing your attention to U. S. Exhibit No. 36, and the front of that card bearing the credit stamp "Nye & Nissen, Inc.," I will ask you if at that particular time you saw cards bearing a similar stamp at the Nye & Nissen plant?

A. Yes. We didn't use them at our plant, but they came from different—Petaluma, Santa Cruz, different places.

Q. But that type of card was in the file.

A. Yes.

Q. Were they used to indicate Pee-wee eggs?

A. The girl would take any card she had to use.

Q. But sometimes you would find cards like that with the word "Pee-wee" written on it?

A. Yes.

Q. Showing you U. S. Exhibit 35 for Identification, I direct your attention to the front of that card, the front of which bears the sign, "Nye & Nissen, Inc." I will ask you if that card of a similar type of card was used at the plant for that purpose at that time?

A. Yes, it was.

(Testimony of Henry Lester Pineda.)

Q. And U. S. Exhibit No. 41, if I asked you the same question, would your answer be the same to that? A. Yes.

Q. U. S. Exhibit No. 40 for Identification, if I asked you the same question would your answer be the same? A. Yes.

Q. U. S. Exhibit No. 39, if I asked you the same question would your answer be the same for that?

A. Well, yes.

Q. And U. S. Exhibit 37 for Identification, would your answer be the same for that?

A. Yes.

Q. I am showing you U. S. Exhibit No. 38. What is that, please? [366]

A. That is the filler.

Q. Part of the filler?

A. That is what we used most of the time while I was there.

Q. The cards which I have just shown you, cards numbered from 35 to 42 for Identification, refer to Pee-wee eggs and Pullet eggs. Could you tell us what they are, please?

A. Well, a pullet egg and a Pee-wee egg are about the same, the same type of egg. They are smaller than a medium egg and to my knowledge——

Mr. Faulkner: This witness has not qualified as an expert in the egg business, your Honor, to testify to the difference between one type of egg and another.

The Court: It goes to the weight of his testi-

(Testimony of Henry Lester Pineda.)

mony. He worked down there for a period of time in this activity. I will allow it. The objection is overruled.

Mr. Faulkner: Exception. May I make the objection more precise? It is incompetent, irrelevant and immaterial, calling for the opinion and conclusion of the witness; certainly no foundation has been laid for his qualifications as an egg man or for the standards of eggs, and which standards obtained has not been developed.

The Court: There is a question in my mind whether you have to be an expert to determine a Pee-wee egg.

Mr. Faulkner: No, I do not think you would, but I think you would have to be an expert to say whether a Pee-wee or a Pullet egg was a medium egg. That is determined by standards and not [367] men in the position of the witness.

The Court: Proceed.

Mr. Faulkner: That is my position. Exception.

Mr. Hippeli: Q. What was the approximate size of eggs contained in cases known as the Pee-wees on this particular day?

A. A Pee-wee case of eggs would weigh about 41 around 42 pounds or 40 pounds,—42 to 43 pounds to a case of eggs. That is counting the case, base, filler, and everything else.

Q. You have lifted many of those?

A. Yes sir.

Q. You were a lumper for some period of time?

A. Yes.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: That is just the difficulty. The standards that are in evidence would make those large eggs, your Honor.

The Court: It goes to the weight of the testimony.

Mr. Faulkner: It is not testimony at all.

The Court: The Court has allowed it.

Mr. Faulkner: All right. I want to be fair to the Government. They put in one thing that says one thing and a witness that says another.

Mr. Hippeli: Q. Do you recall the approximate weight of the case in which those eggs would be contained.

A. You mean how much would a case of eggs weigh?

Q. An empty case?

A. An empty case would weigh I think about seven pounds.

Q. Do your know how much the flats and fillers would weigh?

A. I would say the net of the Pee-wee case would be under 34 [368] pounds, close to 34.

Q. After this particular lot of eggs were graded and some cases were received by you which contained the Pullet or Pee-wee grade in them, what was done with all that class of eggs?

A. This order here, I put a cover on it, what we call a full cover—a full cover could be two halves to one piece—I put them in dumps of five and truck them up against the wall. We had a

(Testimony of Henry Lester Pinera.)

place there signifying Pee-wee eggs and a little mark on them so they wouldn't be mixed up.

Q. How would you mark them?

A. I would put a little "P" on them.

Q. At this particular time would you observe Goddard also marking them in that way?

A. No, not this time.

Q. Was he present, when you were marking them and placing them in a separate pile on the floor?

A. I can't say who was present. I know he told me where to put them.

Q. Do you recall whether Mr. Menges was present? A. Yes.

Q. Did he assist you in placing them on the floor? A. Yes.

Q. Was there another classification of eggs that was graded at that particular time other than the Pee-wees? A. Yes, Grade A Medium.

Q. Where were they placed?

A. They were placed on trays or skids.

Q. And where were the trays placed?

A. They were placed right outside the candling room. [369]

Q. Do you recall whether or not the lot of eggs placed on trays and placed—the lot to which you have referred as medium eggs, is that right?

A. Yes.

Q. Do you recall whether they were inspected?

A. Yes, they were inspected.

Q. When? A. When? Well—

(Testimony of Henry Lester Pineda.)

Q. How soon after they were candled?

A. Well, we started, say—we started—well, this particular order, the following day that they were candled.

Q. Do you recall who called for the inspection?

A. Mr. Goddard.

Q. Do you recall the names of the inspectors who came and inspected them?

A. Mr. Moosman.

The Court: Q. Mr. Who?

A. Moosman. I believe. We used to call him Moosey, a nickname.

Mr. Hippeli: M-o-o-s-m-a-n?

A. That is right.

Q. Do you recall if Mr. Moosman or anyone placed a stamp on the cases which were inspected by Mr. Moosman? A. Yes.

Q. Do you recall the stamp which was placed on them?

A. Well, it was—I believe you call it a rectangular stamp. I would say maybe an inch or an inch and a half wide and about two or three inches long and it had State Agriculture, and then it had a date, and then it had Medium Grade A or Medium Extra, rather.

Q. Do you recall to whom those were delivered?

A. No. I know they went down to Pier 30.

Q. Do you recall how they were taken off the floor?

A. Yes, we put them—we had them on flats when they came out of the candling room, and

(Testimony of Henry Lester Pineda.)

these would not be candled by the inspector the same way the army men would. They would be taken up in the front just in back of Ruby Goddard's office there, and then they would be spread. We put them 24 high or 18 high. It all depends on how many trays we had. And then we would cut them down so they would be one high. And then every case had to be opened and the inspector—he would take three dozen eggs out of this case, and then he goes to the next case and takes the type, three dozen, and puts the other three dozen into this case, and then the second three dozen out of this case—he keeps rotating from one case to another. In one case he would take them away down at the bottom, and in the second he would take the first three dozen here and put them back where the first three dozen were, and then he would be taking the second—and then he goes to the next case, takes out two tiers and puts them in this case, and then he would be taking out the third. In that way he won't be inspecting the same eggs—like I mean—gee, I don't know how to explain this. [371]

Q. He would be taking separate fillers which contained how many eggs? A. Three dozen.

Q. Would he place them in a case or on the floor?

A. He put them on top of the case, there.

Q. And then he would take another tray, from another case? A. Yes.

Q. And place that on top of the first tray?

(Testimony of Henry Lester Pineda.)

A. What I mean is he doesn't take the top tier from each case. He doesn't take that.

Q. But he will take different fillers from different cases and he will assemble those at one place and take this particular——

A. To be inspected.

Q. You say this man would inspect near Mr. Goddard's office?

A. Near Mr. Goddard's office.

Q. Was there a candling booth there?

A. No, no candling booth. He used to bring his own light. There was a light there, but he would bring his own light, and he would inspect them up there.

Mr. Hippeli: The Government offers for identification a Nye & Nissen "Biddy egg" green label marked "30 Dozen Medium," and containing a purple "P" stamped on it.

(The label was marked U. S. Exhibit No. 43 for Identification.)

Mr. Hippeli: Q. I will show you U. S. Exhibit No 43 for Identification and ask you if that is the Nye & Nissen [372] green Biddy egg label referred to in your prior testimony.

A. Yes, although all the labels while I was working there didn't have that "Medium" up there.

Q. It would be the same then except the for "Medium"? A. The same.

Q. When you were working in the plant what did the green signify?

A. The green signified a medium.

(Testimony of Henry Lester Pineda.)

Q. What did the "P" signify?

A. The "P" was up to whoever was putting it out. It could be a pullet or it could be whatever you wanted to use for his own code.

Q. Pullet or what?

A. Pee-wee, whatever he wanted to use for it. The stamps are right on the bench.

Mr. Hippeli: The Government next offers for identification a green Biddy egg label bearing the label "Carefully selected and packed by Nye & Nissen, Inc., General Office, San Francisco," containing an indelible ink stamp, "Medium Grade A." I offer that for identification.

(The document was marked U. S. Exhibit 44 for Identification.)

Mr. Hippeli: Q. In showing you U. S. Exhibit 44 for Identification, I ask you if that is a Nye & Nissen Biddy egg label, a green label.

A. Yes, it is.

Q. Directing your attention to the indelible stamp, Medium Grade A, are you familiar with that stamp? A. Yes.

Q. Can you see it all right? A. Yes.

Q. What is it?

A. I paste them on the cases quite a few times. [373]

Q. When would a stamp similar to that be placed on a case?

A. Whenever it was to be inspected, or to be

(Testimony of Henry Lester Pineda.)

known as Medium Grade A, we put "Medium Grade A" on it.

Q. A stamp similar to that would be placed on the eggs when the Nye & Nissen Company push it out of the candling room?

A. Yes, as we labeled the eggs we would put the stamp on it.

Q. That would be about the time you would label it, top it, and stamp it? A. Yes.

Mr. Hippeli: The Government next offers for identification a similar Nye & Nissen green shady egg label containing two purple "P's" on it.

(The label was marked U. S. Exhibit 45 for Identification.)

Mr. Hippeli: Q. Showing you U. S. Exhibit No. 45 for Identification, is that a Nye & Nissen green label

A. That is a green label.

Q. Are the two purple P's stamped on it similar to the P's on the preceding exhibit? A. Yes.

Mr. Hippeli: The Government next offers for identification a Nye & Nissen green egg label containing a stamp which purports to be the U. S. Department of Agriculture stamp dated May 4, 1944, showing the grade, U. S. Grade AA.

(The label was marked U. S. Exhibit 46 for Identification.)

Mr. Hippeli: Q. Showing you U. S. Exhibit No. 46, is that also a Nye & Nissen green label?

A. Yes, sir. [374]

Q. Directing your attention to the indelible

(Testimony of Henry Lester Pineda.)

stamp appearing hereon, I will ask you if that is similar to a United States Department of Agriculture Grade AA stamp?

A. Yes, it is, but while I was there they had a different type of a stamp. I believe it was known as U. S. Special instead of U. S. Grade AA.

Q. When you were there they were using the name Grade as distinguished from letter grades, is that right?

A. We used those grades ourselves down on the bench, but I think the Government men were using the specials, extras and standards.

Q. Was the U. S. Grade changed to a letter grade about the time you left, do you recall?

A. Well, before—just before I left—or I would say before Jimmie Nix left he told me the stamps would be changed——

Mr. Faulkner: What Mr. Nix told him would be hearsay.

The Court: It may go out.

Mr. Hippeli: I do not know whether it would, or not. Mr. Nix is joined in the conspiracy count.

Mr. Faulkner: You have not shown it yet and he is not on trial.

Mr. Hippelli: I think any statement of Mr. Nix may bind the other defendants when the conspiracy is general.

The Court: Read the question and answer.

(Record read.)

The Court: It may go out. [375]

Mr. Faulkner: And the conversation?

(Testimony of Henry Lester Pineda.)

The Court: Read the answer. The latter part of the answer may go out.

(Answer re-read.)

Mr. Faulkner: We ask the conversation with Mr. Nix go out as hearsay.

The Court: It may go out at this time.

Mr. Hippeli: The Government next offers for identification Nye & Nissen green egg label bearing what purports to be the United States Department of Agriculture Government Grade U. S. Grade AA stamp dated April 29, 1944, I believe.

(The label was marked U. S. Exhibit 47 for Identification.)

Mr. Hippeli: Q. Directing your attention to U. S. Exhibit No. 47 for Identification, is that a Nye & Nissen green egg label?

A. Yes, it is.

Q. And showing you a stamp on the face of the exhibit, is that similar to the United States Department of Agriculture stamp which was used when you were there? A. Yes.

Mr. Hippeli: The Government next offers for identification a Nye & Nissen green egg label containing what purports to be a United States Department of Agriculture stamp, U. S. Grade AA, dated April 24, 1944, for identification.

(The label was marked U. S. Exhibit 48 for Identification.) [376]

Mr. Hippeli: Q. Showing you Government's Exhibit 48 for Identification I will ask you if that is a Nye & Nissen green label. A. Yes.

(Testimony of Henry Lester Pineda.)

Q. And the stamp thereon, is that similar to U. S. Department of Agriculture stamp?

A. Yes.

Mr. Hippeli: The Government next offers for identification a green Nye & Nissen label containing the purple indelible stamp "Medium Grade A."

(The document was marked U. S. Exhibit 49 for Identification.)

Mr. Hippeli: I next offer for identification a Nye & Nissen green egg label bearing indelible stamp "Medium Grade A."

(The document was marked U. S. Exhibit 50 for Identification.)

Mr. Hippeli: Q. Showing you the label No. 49, I will ask you if that is a Nye & Nissen green label.

A. It is.

Q. Directing your attention to the "Medium Grade A" stamp appearing on the face, I will ask you if that was similar to the stamp which you employed when you were down at Nye & Nissen's.

A. It is.

Q. Showing you Government's Exhibit 50 for Identification, I will ask you if that is the Nye & Nisson green label. A. It is.

Q. And the indelible stamp appearing on the face, is that the Nye & Nissen "Medium Grade A" stamp? A. Yes. [377]

Mr. Hippeli: The Government next offers for identification a Nye & Nissen green egg label bearing the indelible stamp "Medium Grade A." on the face.

(Testimony of Henry Lester Pineda.)

(The document was marked U. S. Exhibit 51 for Identification.)

Mr. Hippeli: Q. Showing you 51 for identification, is that a Nye & Nissen label.

A. It is.

Q. Is the purple stamp "Medium Grade A" similar to the stamp employed by Nye & Nissen?

A. Yes, it is.

Q. Did you ever hear any conversation by any of the defendants concerning the delivery of cases of eggs from the defendant's plant at Nye & Nissen?

A. We have a delivery down to the dock——

Q. Any conversation about deliveries from Nye & Nissen? A. Oh, yes.

Q. Was, for example, the one you have referred to a delivery to the waterfront—who was present at that conversation?

A. Well, we have the same fellows all the time I mean Mr. Nix, Mr. Goddard, Mr. Moncharsh——

The Court (Interrupting): In order to establish evidence in relation to any conversation with any of these defendants the time and place and persons present must be fixed.

Mr. Hippeli: Q. What people were present at this conversation?

A. Well, that delivery was to the waterfront; Mr. Nix, Mr. Goddard and myself. [378]

Q. Was Mr. Moncharsh there present?

A. No. And Tom Andrade was.

Q. When was this conversation?

A. I would say about a year before Tom quit.

(Testimony of Henry Lester Pineda.)

Q. Andrade, whom you referred to?

A. Yes.

Q. Do you recall when Mr. Andrade quit?

A. No, I am not sure of the year, but I believe it was around 1940. I am not sure, I can't say for sure.

Q. Is that the date he quit or the date of the conversation?

A. No, that was when he quit.

Q. The time of this conversation would be during the year 1939?

A. If he quit in 1940, about that time.

Q. Do you recall what time during the year that you had this conversation?

A. No, really I could not.

Q. Was it in the winter or summer?

A. No.

Q. What was said at that time?

Mr. Faulkner: We object to this. No time has been fixed. For any defendant to defend against such a conversation as under these circumstances, it may have been in 1940 or it may have been in 1939 and the man doesn't know the date——

Mr. Hippeli: I believe the witness testified that Mr. Andrade left in 1940, so that he believed the conversation, to the best of his recollection, was during the year 1939.

The Court: Where was this conversation had that you have in mind?

A. Right in the plant, right around Ruby [379] Goddard's office.

Q. Where?

(Testimony of Henry Lester Pineda.)

A. Next to that office on the left-hand side, right outside of the office. I was going down to the waterfront to help them unload eggs.

Q. Do you recall what time it was this occurred?

A. No.

Q. Do you recall what month?

A. No. We have had similar conversations all the time, whenever we had certain orders to deliver at the waterfront.

Q. Have you any particular order in mind?

A. No, just an order that we delivered some cases down to the waterfront. I mean I couldn't tell you to whom they were going.

Mr. Hippeli: Q. Have you a particular conversation in mind?

A. Well, what we always did say.

Q. I am asking you to direct your attention to a particular conversation pertaining to the receipts from Petaluma.

Mr. Faulkner: Your Honor, this question was about a delivery at the waterfront. Now it is receipts from Petaluma.

Mr. Hippeli: Deliveries at the waterfront.

The Court: What was it you said to me when I asked you that question?

A. Deliveries to the waterfront.

The Court: He said deliveries to the waterfront.

Mr. Hippeli: Can you fix the time any better than that? A. No, I could not.

Q. What was said at that occasion?

Mr. Faulkner: We will object to it as hearsay

(Testimony of Henry Lester Pineda.)

and it is [380] impossible for a defendant to defend against a conversation of that type, and it is incompetent, irrelevant, and immaterial, unless it is tied in to certain charges in this indictment. This conversation relates to no charge in the indictment. The time and the place has not been fixed. There is no way in the world to know, nor is the shipment involved——

The Court: At this time I will sustain the objection on the ground the proper foundation has not been laid. I might suggest if you develop the facts when this gentleman quit—what was his name?

A. Tom Andrade.

Mr. Hippeli: Q. He said as best he recalls—he testified he quit in 1940.

The Court: In any event, the court sustained the objection at this time until the proper foundation has been laid.

Mr. Hippeli: Q. Do you recall any conversation at which any of the defendants were present, in which reference was made to the preparation of orders at Petaluma? A. Yes.

Q. Who was present at that conversation?

A. There was Mr. Nix, Mr. Goddard, Moncharsh and myself.

Mr. Faulkner: I did not get one name there. May I check with the reporter?

(The record was read.)

Mr. Hippeli: Q. Will you fix the time of this conversation as best you can?

A. It was about five years ago. [381]

Q. That would make it around the year 1940?

(Testimony of Henry Lester Pineda.)

A. About the year 1940.

Q. What was said at that time?

Mr. Faulkner: We object to that. It is not tied in to any testimony involved in this action. No Government orders, nothing relating to the charge in the indictment, and it is too indefinite,——

Mr. Hippeli: I believe the conversation will tie it in, these questions I am asking are to attempt to lay a foundation to get that conversation in. This all pertains to a charge in the indictment.

The Court: Is that the best foundation you can lay for the conversation?

Mr. Hippeli: Well, I could ask him specifically——

The Court: Is this the only foundation that can be laid? The answer to that is, you should lay a better foundation if you can.

Mr. Hippeli: Q. Do you recall if that conversation referred to Mr. Langworthy?

A. Yes, it did.

Q. Who was Mr. Langworthy?

A. Mr. Langworthy was in charge of the Petaluma branch of Nye & Nissen.

Q. Did that conversation have anything to do with deliveries from the Nye & Nissen plant at Petaluma about Government orders at the waterfront? A. Yes, it did.

Q. What is the substance of that conversation?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial. The proper foundation has not been laid.

(Testimony of Henry Lester Pineda.)

The Court: Where did this conversation take place?

A. Well, close to about five o'clock during that summer.

Q. What summer?

A. The summer five years ago, about 1940.

Q. Where?

A. At Nye & Nissen's plant, 324 Townsend Street.

Q. What time of day?

A. About five o'clock. I was ready to go home. Might have been four-thirty; four-thirty or five.

Q. You have a definite recollection of that conversation?

A. Yes, because I was commuting from here to Woodacre at that time. I had my wife at Woodacre. I asked her the other day. She said it was five years ago.

The Court: Proceed.

Mr. Hippeli: Q. Will you tell us what the conversation was?

Mr. Faulkner: I made an objection, your Honor.

The Court: It goes to the weight of the testimony, I will allow it.

Mr. Faulkner: Exception.

The Witness: We were putting up a Government order.

Mr. Hippeli: Q. Who?

A. Nye & Nissen was. Right here, part of it in San Francisco and part of it at Petaluma, and they were supposed to send their shipment of eggs to the waterfront.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: That is not a conversation. We object to that, what they were supposed to do.

The Court: He is asking for a conversation about five o'clock. I think you said you remembered it.

A. I remember, because I was waiting for Mr. Moncharsh, he was giving me a ride down toward Bay Street, where I lived, he was talking to Ruby Goddard, and I was outside.

The Court: The jury is entitled to know what was said.

A. Ruby Goddard told Mr. Moncharsh to make sure that Mr. Langworthy in Petaluma put up his eggs according to the way we were doing it, so there would be no mistake in the samples. Mr. Moncharsh said that is why he was going to Petaluma to see it was done right, and he would see Langworthy wouldn't slip up.

Mr. Hippeli: Q. Did either of them mention the order of eggs and the purchase order?

A. The grade, no.

Q. Did they mention to whom the order was going to be delivered?

A. No. I helped unload it from Petaluma so it was a Government order, numerous sales.

Mr. Faulkner: We ask that that go out.

The Court: It may go out.

Mr. Hippeli: Q. Was anything else said at that time by either Mr. Goddard or Mr. Moncharsh in your presence? A. No.

Q. Did Mr. Moncharsh give you any direction on that particular [384] occasion?

(Testimony of Henry Lester Pineda.)

A. That night, no.

Q. Did Mr. Moncharsh or any of the defendants advise you that there may possibly be a delivery the next day? A. Yes.

Q. Who told you that?

A. Mr. Moncharsh was talking to Ruby and Ruby gave me an order not to report to work at Townsend, but to go down to the waterfront.

Q. Did Mr. Moncharsh give any such directions to Mr. Goddard? A. That I didn't hear.

Q. Did Mr. Goddard then tell you to be down at the waterfront the next day? A. Yes.

Q. Do you recall at what pier? Where did Mr. Goddard tell you to report the next day?

A. Pier 16, I am pretty sure.

Q. Do you recall what company operates that pier? A. No, I don't.

Mr. Faulkner: May I get the number from the reporter, your Honor?

(The record was read.)

Mr. Hippeli: Q. You say Mr. Moncharsh—did he drive you somewhere?

A. Yes, he drove up to Bay Street, and I got off at Bay and Grant Avenue.

Q. When he drove you to your home did you have any conversation with Mr. Moncharsh pertaining to what Mr. Moncharsh was going to do at Petaluma? A. No.

Q. Did Mr. Moncharsh tell you to see him the next day at the pier?

(Testimony of Henry Lester Pineda.)

A. He told me to make sure I was down at the pier, that was all. [385]

Q. What happened the next day?

A. Well, next day we were down at the Pier 16 with Harry Smiley.

Q. Who was he?

A. He was the truck driver from Petaluma, who took the truck and trailer down to San Francisco.

Q. Was he employed by Nye & Nissen?

A. He was, yes.

Q. Who was at the pier?

A. At the pier was Tommy Andrade, myself, and Mr. Nix and Mr. Berman.

Q. Was Mr. Moncharsh there?

A. He came down later on.

Q. Were any Government inspectors at the pier?

A. I don't recall.

Q. Was a Nye & Nissen truckload of eggs there?

A. Yes, truck and trailer.

Q. Was the truck unloaded?

A. No, it was waiting—he was waiting outside for us to get there.

Q. Was the truck then brought onto the pier?

A. Yes.

Q. When it was in the pier was it unloaded?

A. Yes.

Q. Who unloaded it?

A. It was Tommy, the same Tommy Andrade, Mr. Berman, myself, and Jimmie Nix.

Q. Was Goddard there? Did he accompany you inside the pier? A. No.

Mr. Faulkner: Mr. Goddard was not at the pier.

(Testimony of Henry Lester Pineda.)

Mr. Tippeli: Q. Had Mr. Moncharsh arrived yet? A. No. He came about an hour later.

Q. Was Mr. Smiley still there with the truck?

A. Yes.

Q. Will you explain whether while the eggs were on the truck, [386] if you noticed if any stamp appeared on the eggs?

A. Government stamp?

Q. Yes. A. I don't recall.

Q. How were the eggs unloaded?

A. Well, I will have to give Smiley's conversation. He said, he says giving us the cases of eggs, he would tell us when to go down with the cases of eggs. "Down" would mean three high——

Mr. Faulkner: A conversation with Mr. Smiley would be hearsay as to the defendants.

Mr. Hippeli: The defendants were present.

The Court: During this conversation with Smiley, who else was present?

A. Mr. Berman, Mr. Nix, Mr. Andrade.

The Court: I will allow it.

Mr. Hippeli: Q. Did Mr. Moncharsh arrive during that unloading?

A. Yes, a little later.

Mr. Faulkner: The court allowed this against the person who was present.

The Court: Yes.

Mr. Faulkner: Mr. Berman.

Mr. Hippeli: Q. Will you tell us how you unloaded the truck?

A. Well, Smiley would get on the truck and would tell us, give us a case and tell us, "down."

(Testimony of Henry Lester Pineda.)

Q. What?

A. Give us the case and say "down." We would put in down.

Q. What do you mean?

A. Well, three high. On the waterfront [387] you usually go up about five high; just lay them on the floor.

Q. What do you mean, stacking them?

A. Three high would be that high. Then he would tell us, "Top," and that would mean they were stamped and we put them on top.

Q. Did you notice any different marking to the case that were on top and the cases that were put on the bottom?

A. At the beginning I didn't notice. I kept looking. There were quite a few men to feed, that means we had to give four men cases of eggs, see? The samples were marked one way. He told us, I asked him so I wouldn't be making a mistake—when they stencil a case——

Mr. Faulkner: Just a minute. Who is this?

The Witness: Well, Smiley.

Mr. Faulkner: What Mr. Smiley told him is hearsay.

The Court: Were the other defendants present?

The Witness: Yes: Mr. Berman, Mr. Andrade and Mr. Nix.

Mr. Faulkner: They are not defendants; just Mr. Berman.

Mr. Hippeli: Proceed.

A. So when they stencil the case, if the stencil

(Testimony of Henry Lesser Pineda.)

was placed kitty-corner that would mean a sample.

Mr. Hippeli: What do you mean by "stencil"?

A. The disposition of a case would be stenciled on the top. It would be around four lines on the stencil with ink. If they were kitty-corner it signified a sample, if they were on straight it would signify they were what we call cut-outs. [388]

The Court: It is now time for adjournment. Ladies and gentlemen, before you leave keep in mind the admonition of the court, namely, that you are not to converse among yourself nor with anyone else concerning the testimony. You are to permit no one to address you concerning it. You are to form or express no opinion until the matter is finally submitted to you. Return on Tuesday morning at ten o'clock.

(The trial was then continued until Tuesday, January 22, 1946, at 10:00 o'clock a.m.) [388-a]

Tuesday, January 22, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

Mr. Faulkner: Ready.

The Court: Call the roll of the jurors.

(The roll was called by the Clerk, all jurors answering present.)

LT.-COL. PEARL HUGH HAND,

recalled.

Direct Examination (Resumed)

Mr. Houck: Q. Colonel Hand, on Friday I asked you to bring general regulations of the army

(Testimony of Lt.-Col. Pearl Hugh Hand.)

applicable to the packing and sealing of cases of eggs for overseas shipment. Have you brought those regulations? A. Yes, I have.

Q. What are they?

A. CE271 dated April 28, 1931.

Q. Will you point out to me where in this document are the requirements——

Mr. Faulkner: May I see the document, please?

Mr. Houck: Yes. I ask the clerk to mark for identification a bulletin designated as No. CE271 dated April 28, 1931.

The Clerk: U. S. Exhibit 52 for Identification.

(The document was marked U. S. Exhibit 52 for Identification.)

Mr. Houck: Q. Colonel, will you point out to me where in this bulletin are the provisions applicable to the purchase by [389] Army for overseas shipments of eggs.

A. Under paragraph II-1b(3)b, right here it is explained, at the bottom of the page.

Q. I notice this U. S. Exhibit 52 for Identification is dated in 1931, Colonel. Is there a superseding regulation or instruction? A. Yes.

Q. What is the date of that? Do you have that number? A. No, I don't.

Q. Do you know the date of it?

A. I believe it is in February, 1943.

Q. To your knowledge did this apply from the date of its issuance to February, 1943?

A. Approximately; I don't remember the exact date.

Q. But until this 1943 document?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. There was an amendment to that specification.

Mr. Houck: I offer this in evidence as Government's Exhibit 52 in evidence.

Mr. Faulkner: No objection.

The Clerk: 52 in evidence.

(The document marked U. S. Exhibit 52 for Identification was thereupon admitted in evidence.)

Mr. Houck: Q. Will you read the provisions applying to Army purchases of eggs for overseas shipment?

Mr. Faulkner: May I ask the colonel where he is reading so I can follow him? [390]

The Court: What page?

The Witness: I believe it would be page 4.

"H-1b(3)b. For sea stores supply ship cargo, storage ashore, and for special shipments. Shall be in new, clean, sound, standard commercial cases, in good condition, containing 30 dozen net.

Fillers, flats, and commercial cushions (excelsior pads) shall be of standard quality, new, sweet, clean, and dry, and made of odorless wood pulp or other odorless material suitable for storage; three cushions (excelsior pads) shall be used in each section of each case; one at the bottom, one under the first filler, counting from the top, and one at the top.

Egg-case flats of the cushion-ring type may be used in lieu of the odorless flats and pads, provided they are arranged as outlined under H-1b(3)a and are made of odorless material suitable for storage

(Testimony of Lt.-Col. Pearl Hugh Hand.)

and have sufficient strength and rigidity to withstand storage conditions.

H-1b(3)c. The cases shall be strapped at each end by the following method:

No. 13-gage galvanized round wire, having a tensile strength of not less than 300 pounds, drawn sufficiently tight to lie flat on all sides of the container and joined at the ends mechanically with a knot or tie having at least 70 per cent of the tensile strength of the wire itself." [391]

Mr. Houck: Q. Is there any requirement in that bulletin or otherwise concerning the ceiling of this wire strapping?

Mr. Faulkner: We object to that——

The Witness: A. No.

Mr. Faulkner: May I ask the answer go out?

The Court: The answer is No.

Mr. Faulkner: The bulletin speaks for itself.

The Court: In any event they aren't there.

Mr. Faulkner: He can't change the bulletin, your Honor.

Mr. Houck: Q. Did your office issue any such instruction, written or oral? A. Yes.

Q. What was that?

A. Instructions were issued to inspectors in Petaluma.

Q. Inspectors at what plant?

A. The plant of Nye & Nissen.

Q. Who issued the instructions?

A. My office.

Q. How were they issued? A. Orally.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. What were those instructions?

Mr. Faulkner: We object to them as hearsay and not binding upon the defendants in this case, and incompetent, irrelevant, and immaterial.

Mr. Houck: We propose, your Honor, to bring this home to the defendants upon the testimony of this inspector Steffenhagen at Petaluma. What I want at this time to do is to show that those instructions were given to the inspector by his superior officer, and are not any whim of his. [392]

Mr. Faulkner: Whatever instruction to his inspector that was given cannot bind the defendants. If some of the witnesses had a discussion with the defendants relating to the desires of the Army that would be admissible, but the instructions of the Colonel to his inspectors are hearsay.

The Court: The proper foundation has not been laid.

Mr. Houck: Q. Did you ever discuss the instructions with any of the defendants?

A. No.

Q. You, personally, I mean? A. No.

Q. Have you ever been present at any discussion or at any conversation where they were discussed?

A. No.

Q. Have you been present at any discussion of this subject with any employee of the defendant corporation? A. Yes.

Q. With whom?

A. Mr. Langworthy, of Nye & Nissen, at Petaluma.

Q. When was it discussed?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. It was during the month of March, 1943.

Q. Where did it take place?

A. In Nye & Nissen's plant at Petaluma.

Q. Was anyone present besides Mr. Langworthy and yourself?

A. Sergeant Steffenhagen.

Q. What was said at this conversation by you or by the sergeant or by Mr. Langworthy?

Mr. Faulkner: We object to that as hearsay as to the defendants and not binding upon them. [393]

Mr. Houck: Mr. Langworthy, your Honor, has been identified as the manager of the defendant's plant at Petaluma and this would be pertaining to the participation of the defendant corporation, at least.

Mr. Faulkner: The declaration of a plant manager or a superintendent would be hearsay as to the defendant Nye & Nissen, and an attempt to bind them in a civil case, but this is a criminal proceeding. He is not an officer or director——

Mr. Houck: It is the plant manager.

Mr. Faulkner: That does not show that they have that power to bind the corporation in any regard, at all. He is a superintendent. He cannot speak to bind the corporation.

Mr. Houck: If your Honor please, we have this prior conversation with Colonel Hand, in which he said, I think, Abe Moncharsh, in the presence of Ruby Goddard, told him to contact and to deal with Langworthy when he went to Petaluma. He also stated every time he did go to Petaluma he did deal

(Testimony of Lt.-Col. Pearl Hugh Hand.)

with Langworthy when he wanted to contact somebody from the corporation.

Mr. Faulkner: You cannot bind the corporation criminally by anything that happened there.

Mr. Pratt: The corporation can speak only through its managers at a plant such as this one at Petaluma. He was in control, in charge of the business of the corporation at that [394] point. What he did he did on behalf of the corporation; he did as the agent of the corporation that did operate by its officers here in San Francisco. It seems to me there cannot be the slightest doubt that the activities at Langworthy at Petaluma are the activities of the corporation.

Mr. Faulkner: What he did, your Honor, is one thing. Of course, your Honor has allowed ample evidence of what employees did in this case, but what a man said in a conversation has to be brought home to the defendants.

The Court: I will limit it to the corporation. I will allow it. Objection overruled.

Mr. Faulkner: Exception.

Mr. Houck: Q. What was that conversation?

Mr. Faulkner: May I state the grounds exactly, your Honor? Incompetent, irrelevant, and immaterial, and hearsay, and no foundation laid in this, that the conversation occurred between a person who brought the subject matter of the conversation home to any officer or director of the company.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Houck: Q. What was this conversation that occurred in March, 1918?

A. At that time we were sealing eggs for overseas shipment that had been strapped and Mr. Langworthy felt it was an undue hardship on their part to have the eggs sealed. [395]

Q. What do you mean by "sealing" eggs?

A. At the time we were wire-strapping the cases at that plant for overseas shipment and placing a lead wire seal around the straps on the cases.

Q. Just what was this lead seal, how was it placed on the wire strapping?

A. It was placed around the wire strapping.

Q. At what point?

A. Where the straps cross the top of the cases.

Q. The top of the straps? A. Yes.

Q. Just what does that lead seal look like?

A. It is a piece of twisted wire, two strands approximately, twisted around each other. It is approximately six inches long and has a small lead top on it through which the wire is passed, one end of the wire is anchored in the lead top; it is about half as large as a dime, I would say. The wire on the seal is passed around it, the wire strapping where they cross, and it is passed through the lead top again and clamped with a special clamp.

Q. What is the special clamp?

A. It is a piece of pliers that squeezes just the top of the lead, squeezes the lead facing down, fastens securely the ends of the wire.

Q. Does it leave an imprint on the lead seal?

A. Yes. It has, "Inspected, U. S. Army" on one

(Testimony of Lt.-Col. Pearl Hugh Hand.)

side, and "VC" on the other.

Q. What does the "VC" stand for?

A. Veterinary corps.

Q. You said Mr. Langworthy was objecting to this requirement?

Mr. Faulkner: He did not say that, at all. [396]

Mr. Houck: I think he did.

Mr. Faulkner: He said it was an undue hardship to ask them to seal.

The Court: State the conversation; who was present?

A. Sergeant Steffenhagen, if I remember correctly, and Mr. Langworthy.

The Court: Anybody else?

A. Mr. Langworthy and myself.

Mr. Houck: Q. What was said by Mr. Langworthy, again?

The Witness: May I have my reply read?

Mr. Faulkner: No.

Mr. Houck: No. Repeat it.

A. He felt it was an undue hardship.

Q. What did he say?

A. He said in his estimation it was an undue hardship for Nye & Nissen to have to pack their eggs for overseas shipment, sealing them.

Q. Was there any response made to that?

A. No.

Mr. Houck: That is all the direct examination, your Honor.

Mr. Faulkner: Is that the entire direct examination of this witness?

Mr. Pratt: This witness will be recalled in con-

(Testimony of Lt. Col. Pearl Hugh Hand.)

nection with several specific transactions relating to deliveries to particular boats, as I explained to the court two weeks ago yesterday.

Mr. Faulkner: We will object to that method of the presentation of the case, your Honor. In other words, the witness [397] should be examined in his direct examination in its entirety now. We ask the court to direct counsel for the Government so to do.

Mr. Pratt: If your Honor will recall, this is what occurred on that occasion: You said, "Are there matters that counsel can agree upon which will facilitate the trial of the case when it starts?" In response to that statement by the court I got up and stated that the Government planned in presenting the proof of specific transactions relating to the particular boats to put on the proof complete as to a boat, although it would require the recalling of some of the witnesses to testify in regard to other boats, the purpose being to clarify and make understandable for the jury the several transactions relating to these particular boats. When I made that statement Mr. Faulkner said he would certainly agree to any arrangement that would clarify for the jury the presentation of the evidence, and then the court said, "Well, I am glad to see that counsel for opposing parties agree on something."

Mr. Faulkner: My understanding of what happened in the courtroom——

Mr. Pratt: Will you please not interrupt?

Mr. Faulkner: Well, I will assign it as misconduct to make a statement out of the presence of the jury in relation to stipulations. If the matter is to

(Testimony of Lt.-Col. Pearl Hugh Hand.)

be discussed at length, your Honor, we will ask the jury be excused so we can freely [398] relate what happened before your Honor. What I said to your Honor was it had been my experience that in every case I ever tried I was more anxious to have a more accurate record as to what happened as to the time and place in this case, and I would stipulate to what would aid in a clarification of the issues; but I never said to your Honor I would stipulate to a piecemeal trial in examination of witnesses. Then I proceeded to examine the stipulation, and every effort to prevent us getting any information on this charge made by the Government——

Mr. Pratt: This is highly improper.

Mr. Faulkner: And I ask Colonel Hand's entire direct examination be concluded.

Mr. Pratt: Just a moment. The suggestion was made of this manner of putting on the Government's evidence, in the light of previous experience I had in a similar situation in another district, to be sure, but the court and counsel at that time readily agreed that it would facilitate the presentation of the case to do it in that way, calling back witnesses from time to time who testified on different transactions that were entirely unrelated to the other transactions. I don't recall how many of these particular transactions Colonel Hand will testify to, perhaps two or three, perhaps less than three. At all events, it cannot in the slightest degree affect the present testimony that he has given. He has testified here in connection with transactions that obtained in con-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

nection with [399] the inspection of food products for the Army, and he has testified as an expert on those matters. He has qualified as an expert. Now, the testimony that I referred to in these instances that are to follow will be his telling of specific transactions, of episodes and instances of which he was a party, in connection with particular shipments of food products that came from these defendants. I cannot see how possibly the present cross-examination by Mr. Faulkner of this witness on the testimony that has been elicited so far—how he could be embarrassed in any way by reason of the fact that there will be in the future testimony relating to other things, and it is an orderly manner of presenting the case and the manner in which the jury can be made to understand the evidence. Of course, it is entirely a matter of the court's discretion, but we appeal to the court to permit us to present the matter in that way. It cannot possibly prejudice the defendants and will assist the jury in understanding the facts.

Mr. Faulkner: I can show your Honor clearly right in the presence of this witness the very outstanding prejudice to the defendants. Your Honor will recall that Colonel Hand was called to the stand in this case, and his direct examination was not concluded because of the absence of these records. He testified to a method followed by him in the inspection and examination of eggs in the Townsend Street plant of Nye & Nissen. Then they call another witness, Mr. Pinedas, in here. He testi- [400] fied to

(Testimony of Lt.-Col. Pearl Hugh Hand.)

the same things, but directly opposite to Colonel Hand. Now, what they want to do is take Colonel Hand and the witnesses into a room and go over these stories with them and put them on one, two, three, and straighten out the stories—

Mr. Pratt: I object to that. Your Honor, I resent that.

Mr. Faulkner: Just a minute.

The Court: Just a minute, gentlemen. I will ask the jury to retire to the jury room, please.

(The jury retired and respective counsel argued the pending objection.) [400-a]

The Court: You may proceed.

Mr. Hippeli: Q. Colonel Hand, do you recall during the summer of 1940 inspecting certain cases of eggs on ships in and about the waterfront in San Francisco, Bay area?

Mr. Faulkner: We object to that, your Honor. It is four years before the period stated in the indictment.

Mr. Hippeli: I made a mistake. The year I meant was the sumer of 1944. I will reframe the question.

Q. Colonel Hand, in the summer of 1944, more specifically during the months of April and May, 1944, do you recall inspecting cases of eggs on ships or on piers in and around the San Francisco Bay area? A. Yes.

Q. Did any of these cases of eggs bear Nye & Nissen labels? A. Yes.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Did you make these inspections at the request of the FBI agents Huyett Magee and FBI agent Dallas Johnson?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, whether he did it at the request of——

Mr. Hippeli: Just a minute. I will——

The Court: You may answer. The objection is overruled.

Mr. Faulkner: Exception.

A. Yes.

Mr. Hippeli: Q. Did the agents accompany you on your inspections. A. Yes.

Q. Will you explain generally the manner in which you inspected eggs on these ships? [401]

Mr. Faulkner: We object to a general explanation of how he did it, your Honor, and ask that a foundation be laid identifying the particular merchandise inspected with the agents, the time and place.

The Court: The objection will be sustained.

Mr. Hippeli: Q. At the time of these inspections during the months of April and May, 1944, did you make an inspection sheet upon which you tallied the results of your inspections?

A. Yes.

Mr. Faulkner: We will stipulate that that is an invoice of Nye & Nissen, subject to any correction on either side later.

Mr. Hippeli: That is agreeable, your Honor. May it be admitted into evidence at this time.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: We object on the ground no foundation has been laid, Mr. Hippeli.

Mr. Hippeli: Would you identify that, please?

(The document was thereupon marked U. S. Exhibit 53 for Identification.)

The Court: It may be admitted and marked, for purposes of identification.

Mr. Hippeli: I will make a formal offer, your Honor. At this time the Government offers for identification a Nye & Nissen invoice to the USA, WSA De La Rama SS Co., General Agents, for certain quantities of butter, cheese and eggs in the sum of $1,254.44, said invoice bearing in the lefthand corner the number 3601, the name SS Henry White, Howard Terminal, Oakland, [402] California.

The Court: Let it be admitted and marked.

Mr. Hippeli: The Government next offers for identification a purchase order containing on the top thereof the legend, "The United States of America, War Shipping Administration, The De La Rama Steamship Company," Purchase Order No. 3601, and at the lefthand corner appears "Messrs. Nye & Nissen, 17 Missouri Street, San Francisco, calling for certain quantities of butter, cheese and eggs, indicating that the delivery time is about April 25 to the SS. Henry White, Pier "Will advise". The purchase order is dated April 11, 1944. This purchase order is offered for identification at this time.

The Court: It may be admitted and marked.

(The document was thereupon marked U. S. Exhibit 54 for Identification.)

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Hippeli: At this time the Government offers for identification an egg-grading sheet being entitled, "Veterinary Corps, Inspection of Eggs," and purporting to show the grading of eggs inspected May 3, 1944, and signed by P. H. Hand, Lt.-Col., V.C."

The Court: It may be admitted and marked.

(The document was thereupon marked U. S. Exhibit 55 for Identification.)

Mr. Hippeli: Q. Colonel Hand, I will hand you U. S. Exhibit No. 55 for Identification and ask you if you recognize that [403] sheet.

A. Yes, I do.

The Court: Q. What is that sheet?

A. It is an FHS Form No. 11, used in the grading of eggs for the Army.

Mr. Hippeli: Q. Did you use that sheet?

A. Yes.

Q. Is that your signature on the bottom?

A. That is my signature, my handwriting.

Q. Directing your attention to the top of that sheet, the information down to *your several* columns, will you tell us generally what that information is?

Mr. Faulkner: We object to him testifying to the contents of a document that is not in evidence.

Mr. Hippeli: Q. Does the top of the document identify the particular lot that has been described?

A. Yes, it says the purchase order number is 3601.

Q. And does the bottom of your sheet identify the grading of a particular lot?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. Yes, it does.

Q. I will hand you U. S. Exhibit No. 53 for Identification and U. S. Exhibit No. 54 for Identification and ask you if you have even seen either of those documents before?

A. Yes, I saw them on the USS Henry White.

Q. Were those documents in the presence of a particular lot of eggs? A. Yes, they were.

Q. From those documents, from the purchase order did you obtain the purchase order number which you included on your inspection [404] sheet?

A. Yes, I did.

Q. What is that order number? A. 3601.

Q. Directing your attention to the grade indicated on the upper right hand corner of your grading sheet, from where did you obtain that grade?

A. I obtained that information from the invoice of Nye & Nissen.

Q. Will you tell us what you did from the time you went on the dock or whatever the particular ship was? Just explain what you did in connection with this particular inspection.

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, hearsay as to the defendants, and an act or a transaction not in the presence of the defendants, not binding on them, and no identification made with the eggs inspected or the eggs called for in either the purchase order or in the invoice.

Mr. Hippeli: I believe that the evidence at this time is admissible subject to later being connected up to show that they are the eggs which will have

(Testimony of Lt.-Col. Pearl Hugh Hand.)

been delivered. Other witnesses I believe will testify that certain lots of eggs may have been brought down to the plant. However, I believe Colonel Hand will testify—I can bring it out preliminarily if your Honor desires—that they saw a certain lot——

The Court: It would be well to do that.

Mr. Hippeli: Q. On what date did you make the inspection?

A. The inspection was made 5/3/44.

Q. Is that date marked on your inspection sheet?

A. Yes, it is. [405]

Q. Do you recall where the inspection was made?

A. On the USS Henry White.

Q. Was it made on board the vessel?

A. That is correct.

Q. Do you recall where on the vessel the eggs were situated?

A. At the time I first saw the lot of eggs they were in the refrigerating room.

Q. When you went into the refrigerating room how many cases of eggs did you observe?

A. I saw 50 cases.

Q. Did you count the cases? A. Yes.

Q. And did you indicate the number of cases on your inspection sheet? A. Yes.

Q. At that time did you observe the labels on the cases? A. Yes.

Q. Did they contain a Nye & Nissen label?

A. Yes, they did. [406]

Q. Directing your atention to U. S. Exhibit 41 for Identification, I will ask you if on the Henry

(Testimony of Lt.-Col. Pearl Hugh Hand.)

White you observed cases of eggs bearing labels similar to this? A. Yes.

Q. Do you recognize that as a Nye & Nissen label? A. Yes, I do.

Q. By "similar to this" I mean do you recall whether or not any of the labels appearing on any of the cases which you saw in the chill box on the Henry White bore an indelible stamp?

A. They were all stamped.

Q. With an indelible stamp? A. Yes.

Q. What did you then do with respect to the 50 cases of eggs that you saw in the chill box?

A. We took 5 per cent of this lot——

Mr. Faulkner: Same objection.

The Court: What is it?

Mr. Faulkner: Incompetent, irrelevant and immaterial, hearsay as to the defendants and not binding on them.

The Court: Overruled.

Mr. Faulkner: Upon the further ground that the inspection was not an inspection required by law, nor does the inspection mark being depicted have any relation to the observance by the defendants of any grading requirements by any regulation of any kind, character or description.

Mr. Hippeli: The purpose of the offered testimony at this time is not to further establish what the method of inspection of the War Department was as Colonel Hand testified to previously. [407] The purpose of the offered evidence at this time is to show that the eggs which were delivered, which

(Testimony of Lt.-Col. Pearl Hugh Hand.)

were billed as Medium AA Eggs were not in fact that grade or that weight of egg.

The Court: Objection overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: The question, I believe, Colonel, was—Read the question.

(Question read.)

Mr. Hippeli: You just began to answer. Had you completed your answer? A. No.

Q. Will you complete it?

A. We took 5 per cent of the eggs out for grading.

Q. Out where?

A. Out into a hallway of the boat near a light switch connection so we could hook up our candling light.

Q. While you were inspecting the 50 cases of eggs did you observe any markings on the cases of eggs?

Mr. Faulkner: We object to the witness refreshing his recollection from a document that he did not prepare himself, your Honor, and that is not in evidence.

Mr. Hippeli: Q. Did you prepare the document you have in your hand? A. Yes.

Q. Is that your egg grade certificate?

A. Yes.

Q. Did you mark on that document you have in your hand your observation with respect to the markings which appeared on the 50 cases of eggs?

A. Yes, I did. [408]

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Did you observe markings on the 50 cases of eggs? A. Yes.

Q. Did you observe stamps on certain of the cases of eggs? A. Yes.

Q. How many cases of eggs bore a stamp?

A. There were 37 cases of eggs stamped with the Veterinary Corps inspection stamp dated 19 July, 1943.

Q. Were those cases wire-strapped?

A. Yes.

Q. Did you observe a United States Department of Agriculture stamp on any of the 50 cases of eggs? A. Yes.

Q. Do you recall how many cases of eggs bore this stamp? A. Four cases, wooden cases.

Q. Do you recall whether or not any of the cases of eggs were stamped pee-wees?

A. Yes, there were nine cases stamped pee-wees.

Q. Did you weigh these nine cases? Do your weights appear on your inspection sheet?

A. No.

Q. Do you recall whether you weighed them or not? A. No, I did not.

Q. Who accompanied you on this inspection?

A. Mr. Magee and Mr. Dallas Johnson.

The Court: Who are they?

A. They were special investigators, I believe you would call them, for the Federal Bureau of Investigation.

Mr. Hippeli: Q. Did you observe either Agent

(Testimony of Lt.-Col. Pearl Hugh Haid.)

Magee or Agent Johnson weighing any of the cases of eggs in your presence?

A. Agent Johnson weighed the eggs. [409]

Q. How many cases of eggs did you grade?

A. I graded five cases.

Q. Did these five cases bear a stamp?

A. Yes, they did.

Q. Can you tell us what stamp they bore?

A. Four of them were stamped "U. S. Grade AA Medium."

Q. Did they bear a Department of Agriculture stamp?

A. U. S. Department of Agriculture stamp.

Q. Did any of the cases carry V. C. stamps?

A. Yes, 37.

Q. Did any of the five cases which you graded bear a Veterinary Corps stamp?

A. Two of them.

Q. Will you indicate to the Court and Jury the manner in which you graded those eggs? Let's take the two cases which bore the Veterinary Corps stamp. Did you grade them all in a similar manner?

A. They were all graded in identically the same manner.

Q. Will you take the two cases of eggs which bore the U. S. Army Veterinary Corps stamp and explain how you graded them?

A. I broke the wire strap. They were in fiber. Opened the case up and I selected the top filler. I took out the filler and displayed 36 eggs so I could

(Testimony of Lt.-Col. Pearl Hugh Hand.)

check them: the exterior of the shells. I graded them before the candling light.

Q. Where did you get the candle?

A. I had the candling light with me and also an egg scale to weigh the eggs.

Q. What was the result of the grading of those two cases?

Mr. Faulkner: Same objection, your Honor; incompetent, irrelevant and immaterial and hearsay as to the defendants.

The Court: Overruled. [410]

Mr. Faulkner: Exception.

The Witness: A. They were given no grade.

Mr. Hippeli: Q. Did you indicate the grade of the specific egg on your chart? A. Yes.

Q. Referring to your inspection sheet, will you tell us the number of the cases which appear in the column labelled "Candler's Number" that indicate the two cases bearing the Veterinary Corps stamp which you just testified to? A. 3 and 4.

Q. Directing your attention to that same column, the first two numbers are marked 1 and 2. What do they indicate?

A. They indicate the wooden cases that were selected for grading.

Q. Directing your attention to No. 1, there are how many columns marked No. 1 that pertain to that particular case; how many lines pertain to case No. 1? A. Four.

Q. Then they will be the lines numbered 1, 2, 3 and 4 on the left-hand column? A. Yes.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. What does line 1 indicate?

A. Line 1 indicates percentage U. S. Grade AA.

Q. I did not make my question clear. Does not line 1 indicate the eggs in a particular filler?

A. Yes.

Q. And how many eggs are in a filler?

A. None.

Q. How many eggs are on a filler?

A. Oh, 36.

Q. Do you candle 36 eggs in a filler?

A. Yes.

Q. As you candled those eggs in that filler did you mark the grade in the column designating the exact grade on your inspection sheet?

A. Yes. [411]

Q. Directing you attention to line 1, column "Percentage U. S. AA", you have the penciled note "Figure One"? A. Yes.

Q. What does that indicate?

A. That indicates that particular lot of the shipment.

Q. To the right of that your column entitled "Percentage U. S. AA", on your first line, you have a "1". What does that indicate?

A. That indicates the number of U. S. Grade AA eggs in that filler.

Mr. Faulkner: We make the objection that a witness may only use a document prepared by him after he has exhausted his own recollection and after he has testified that without the aid of the document he would have no memory on the subject.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

and no foundation has been laid for this witness to read into the record something that he wrote at that time until he has first testified that he either has or has not any recollection on the subject concerning which he testifies and has indicated that he will require this writing to refresh his recollection. I think that is the law.

The Court: Do you remember of your own knowledge the subject matter there in that report, the details of it?

A. I haven't memorized it. I have had it in my possession since the time it was completed.

Mr. Hippeli: Q. Have you any recollection independent of that document as to the grading on the Henry White?

A. I remember very distinctly making the grading on the White. [412]

Q. Do you recall approaching the specific lot of eggs? A. Yes.

Q. Do you recall how many eggs were in that lot independently of the document?

A. There were 50 cases.

Q. Do you recall grading the five of the fifty cases independently of the document?

A. Yes.

Q. Do you recall the specific grades of the specific eggs which you candled at that time independently of the document?

A. The two separate lots, I know there were nine cases of pee-wees and 37 cases no grade.

Q. You did not understand my question. I was

(Testimony of Lt.-Col. Pearl Hugh Hand.)

asking you do you remember independently of the document the grade of a particular egg which you will have candled? A. Yes.

Q. A particular egg as distinguished from cases of eggs? A. Yes.

Q. Do you recall the grade of all the eggs which you will have candled from a particular case independently of the document? A. Yes.

Q. Isn't it the purpose of making documents that are used on the grading so you will have a permanent record of it, you don't keep that information in your head, do you?

Mr. Faulkner: He said he did.

The Witness: Not when I grade approximately two hundred thousand cars a year, no.

Mr. Hippeli: You don't remember each particular grade you have here——

Mr. Faulkner: He just said he did. You asked him and he [113] said yes, he does remember, and you tell him he doesn't.

The Witness: On this particular——

The Court: You may answer.

The Witness: Yes, your Honor.

Mr. Hippeli: Q. Do you recall independently of this document—do you recall the general grade of the 50 cases of eggs?

A. There were 37 cases wire-strapped in fiber——

Q. I mean the grade. Do you know how they graded as a result of your inspection?

A. The entire 50?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Yes.

A. I would say they would be given no grade.

Q. Do you recall the specific percentage of the grades of individual eggs on your candling independently of this document? A. No.

Q. So to determine the percentage of a particular grade of egg that appeared in the case would it be necessary for you to refer to your inspection sheet? A. Yes.

Q. Have you any recollection independently of your inspection sheet as to the percentage of, say U. S. Grade C eggs that appeared in a lot?

A. No.

Q. Would you have to refer to your inspection sheet to derive that particular percentage?

A. Yes.

Q. Asking you to refer to your inspection sheet, or asking you to refer to your inspection sheet will you complete the line of inquiry that I proposed before, namely, as to what the 4 indicates that appears in the column entitled "Percentage of [414] U. S. Grade AA" in the first line?

Mr. Faulkner: We will object to this type of evidence until counsel for the Government has laid a foundation for the witness to refresh his recollection in certain particulars. If he asks some questions of what the percentages were and produces a document such as that I have no objection, but for him to read the document is objectionable and not binding upon the defendants. You asked him to explain a figure. He made it clear to my mind that

(Testimony of Lt.-Col. Pearl Hugh Hand.)

the document indicates the percentage of certain eggs in certain classes. We have no objection to that type of testimony, but this type testimony is very different. What does the figure 1 represent? What does the figure 7 represent? That merely is——

Mr. Hippeli: Well, I was attempting to explain the meaning of the document.

Mr. Faulkner: I mean if the document does not bind the defendants—it is what he sees and observes and he may refresh his recollection from a document made at the time and place when he indicates that.

Mr. Hippeli: The result of his observation is indicted in a particular document.

The Court: He may use this document to refresh his recollection of his inspection, what he did at the time and place. He may so testify.

Mr. Hippeli: Q. How would the grades of particular eggs [415] on a particular flat that you removed from a case of eggs be indicated on your grading sheet?

A. It would be placed in respective columns.

Q. What are those columns?

A. "U. S. Grade AA".

Q. How many of these did you find in the first flat? A. One.

Q. How many did you find in the second flat?

A. Two.

Q. The next flat? A. None.

Q. The next flat?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. There were only three fillers?

Q. You grade those three fillers, you find a certain number of AA eggs in them?

A. Correct.

Q. Then you total your number of eggs?

A. Yes.

Q. And by doing that do you determine the percentage of AA eggs in a case? A. Yes.

Q. Is that correct? A. Yes.

Q. What percentage of A eggs did appear in that first flat? A. 20.

Q. The second? A. 24.

Q. Third? A. 18.

Q. Are those totaled similar to the others?

A. Yes, 62.

Q. Did you find any U. S. Grade B?

A. Yes.

Q. Are those indicated on this chart?

A. Yes.

Q. Did you find any U. S. Grade C eggs?

A. Yes.

Q. Are the U. S. Grade C again indicated in your chart? A. Yes.

Q. What was your next——[416]

Mr. Faulkner: What are they? How many Grade C?

Mr. Hippeli: I am explaining generally the manner in which he filled out the chart. Then I was going to have him give the totals.

Mr. Faulkner: I object to that; I think the court followed the purpose of the objection. He

(Testimony of Lt.-Col. Pearl Hugh Hand.)

cannot read the chart in evidence. He can use it to refresh his recollection so that his testimony is clear-cut of what he did; and he is entitled to those eggs. We haven't any objection if he uses the eggs, but we do have an objection to an examination proceeding contrary to the usual method.

The Court: Read the question.

(Record read.)

Mr. Hippeli: Apparently, there is no question before us.

The Court: It is 12 o'clock, time for adjournment. The jurors may be excused until two o'clock this afternoon.

(A recess was taken until two o'clock p.m.)

Afternoon Session, January 22, 1945, 2 p.m.

The Court: You may proceed.

Mr. Pratt: For the information of the court and for the record, the testimony now being elicited from Colonel Hand in regard to the steamship Henry White relates to the allegations in the seventh count of the indictment, and is also related to the conspiracy count.

Mr. Faulkner: It is not offered in relation to the first, second, third, fourth, fifth and sixth counts?

Mr. Pratt: It is offered, of course, as to the other substantive counts which can be regarded as a similar transaction occurring during the same period of time, so in that respect we claim it is admissible as to all counts.

Mr. Faulkner: We would resist that position, your Honor.

The Court: At this time there is nothing before the court. Proceed.

LT. COL. PEARL HUGH HAND,
recalled.

Direct Examination (Resumed)

Mr. Hippeli: Q. In connection with Government's Exhibit No. 55 for Identification, which is your grading sheet on the Henry White, will you explain how you graded the cases of eggs indicated on your inspection sheet and the result of the grading, please?

A. 100 cases were graded. In each case the eggs were graded by physically looking at the shells and by candling them before a candling light. In the first case graded I found 3 U. S. Grade AA eggs, 62 U. S. Grade A, 19 U. S. Grade B, 4 U. S. Grade C, 3 eggs containing small meat spots, two U. S. Light 30's, 5 U. S. Checks, 2 eggs U. S. Leakers.

The second case after grading 100 eggs in that case I found in that case 29 U. S. Grade AA, 44 U. S. Grade A, 15 U. S. Grade B, 4 U. S. Grade C, 3 with small meat spots, 5 eggs U. S. Checks.

In the third case I found there were 14 U. S. Grade A, 53 U. S. Grade B, 26 U. S. Grade C, 3 Checks, 4 Black Rots.

Q. Were there any grade AA eggs in the third case? A. No.

In the fourth case I graded I found there were

(Testimony of Lt.-Col. Pearl Hugh Hand.)

16 U. S. Grade A, 39 U. S. Grade B, 38 U. S. Grade C, 6 Checks, 1 Rot.

Q. Were there any Grade AA eggs in the fourth case? A. No.

The last case, the fifth case, I found 8 U. S. Grade A, 40 U. S. Grade B, 33 U. S. Grade C, 1 egg with a small meat spot, 8 U. S. Checks and 10 Rots.

Q. Were there any U. S. Grade AA eggs in the last case? A. No, there were not.

Q. Did you average the result of your grading?

A. Yes.

Q. What was that?

A. 2.5 percent loss, so that eggs were no grade.

Q. What percentage of AA eggs were in the five cases graded? A. 16 per cent. [419]

Q. And A—what were the averages for the entire——

A. They were graded in two different lots. In lots 1 and 2 there were 16 per cent Grade AA, 54 Grade A, 17 Grade B, 4 per cent Grade C, 3 per cent meat spots, 1 per cent Light Dirties, 5 per cent Checks, 1 per cent Leakers.

Q. What was lot 1 and 2?

A. That was the wooden cases, there were four of them.

Q. How did the second lot grade?

A. Graded 15 per cent Grade A, 46 per cent Grade B, 32 per cent Grade C, 4.5 per cent Checks, 2.5 per cent loss.

Q. What were those two cases?

A. They were fiber cases.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. What was the average grade of the five cases graded? A. They were all no grade.

Q. As a result of this estimate, how did the whole lot of 50 cases grade?

A. The average loss was over one-half of 1 per cent, so they were given no grade; the loss was too high. There was no inedible loss allowed in any delivery of eggs.

Q. Referring to your inspection sheet, does it indicate the number of cases that bore a U. S. Department of Agriculture stamp? A. No.

Q. Do you recall how many cases of eggs bore U. S. Department of Agriculture stamps?

A. 41.

Mr. Hippeli: At this time the Government offers in evidence U. S. Exhibit No. 55.

Mr. Faulkner: We object to it, your Honor, as an instrument [420] used by the witness to refresh his recollection. It is admissible by the defendants if they desire it, but it is not an admissible document as far as the witness is concerned; incompetent, irrelevant and immaterial.

Mr. Pratt: This is a regular Government record made in the regular course of business, and as such it is admissible in evidence.

Mr. Faulkner: We make the further objection that there is no foundation at this time that the eggs involved in this inspection are traceable to or came from the plant of Nye & Nissen.

Mr. Hippeli: Q. Referring to U. S. Exhibit 55 for identification, I will ask you, Colonel, if this

(Testimony of Lt.-Col. Pearl Hugh Hand.)

is a record that you kept in the ordinary course of your business? A. Yes.

Q. That is the official record of your department? A. That is correct.

Mr. Faulkner: I would like to ask the witness a couple of questions on the document before your Honor rules.

The Court: Proceed.

Mr. Faulkner: Q. In the course of your business, Colonel, you keep an inspection sheet of inspections of eggs indicating Army inspectors, do you not? A. Yes.

Q. On the occasion that you went down to the pier with a Federal Bureau of Investigation agent, you did not go down [421] there for the purpose of inspecting or grading eggs that were being sold subject to an Army inspection, were you?

A. No.

Q. This was a Department of Agriculture inspection; isn't that right?

A. As far as I know.

Q. Is that correct?

A. I don't know. The inspection was supposed to be——

Q. 41 of the cases bore a Department of Agriculture stamp? A. Yes.

Q. The shipment was to the Henry White, isn't that correct? A. Yes.

Q. The Army was not inspecting eggs for the Henry White at the time they were ordering eggs for that ship, were they? A. No.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. This particular document is a document that you prepared in connection with a request made on you to accompany a Federal Bureau of Investigation agent, isn't that correct? A. Yes.

Q. Had you ever done that before? Is that your regular course of business, to accompany Federal Bureau of Investigation agents?

A. It was at that time.

Q. That was the first occasion, wasn't it? Answer "Yes" or "No", please.

The Court: Do you understand the question?

The Witness: I am trying to recall.

The Court: Oh, I beg your pardon.

The Witness: As near as I can remember. [422]

Mr. Faulkner: Q. So that at the time you were down there on the dock it was not your practice to go down to inspect War Shipping Administration shipments that were inspected by the Department of Agriculture, was it?

A. Only on order of higher authority.

Q. This was the first time you had received the order?

A. Under orders from higher authority, War Department authority.

Q. As far as you remember.

A. Yes. I was ordered to by higher authority.

Q. That's what I mean. Your best recollection of [illegible] this is the first occasion?

A. That I made an official report, yes.

Q. You made this record and gave it to the FBI, did you?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. I made it for my own personal record.

Q. You delivered it to the FBI, didn't you? Isn't that correct?

Mr. Hippelli: I believe——

Mr. Faulkner: Just a moment, Mr. Hippelli. I object to counsel interrupting unless he has a legal objection.

Mr. Hippelli: I object to that as having been asked and answered. I believe the witness in identifying the document this morning explained that he obtained it from his own files and he had his own files in his possession from the time——

Mr. Faulkner: That is merely telling the witness what to say.

The Court: That is what he testified to this morning. [423]

The Witness: That has been in my possession since the day it was made.

Mr. Faulkner: Then this is not a document that you turned over to the Army, you kept it yourself?

A. I kept this within the Armed Forces. I am still in the Army.

Q. Have you all the inspection sheets of every case of eggs you inspected from Nye & Nissen's?

A. After two years, I believe, there is a ruling that they are destroyed.

Q. Have you got them within two years in your possession?

A. As long as I am stationed at the Presidio at San Francisco they were in my possession.

Q. Are they in your possession now?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. No. I am not stationed at the Presidio at San Francisco.

Q. Have you in your possession now the inspection sheets that you made while inspecting eggs at the plant of Nye & Nissen in the last two years?

A. They are under War Department security.

Q. Have you got them in your possession?

A. No; when you transfer——

Q. This was an inspection in 1944, isn't that correct? A. Correct.

Q. You have kept them in your possession?

A. That is correct.

Q. Why didn't it accompany the others that are not in your possession?

A. That was for my own personal file.

Mr. Faulkner: That's right. We object to it, that it is [424] not an official document. There is no statute requiring the keeping of a document, your Honor, that would make it prima facie an official document and introducible in evidence.

Mr. Pratt: He has testified this was an official record of the War Department.

Mr. Faulkner: Mr. Zirpoli calls my attention to an additional objection, that this is not connected with any count in this indictment, or any defendant in this indictment.

The Court: Counsel says it had to do with the seventh count.

Mr. Faulkner: But he has not proved that yet.

The Court: Well, he is offering the testimony.

Mr. Faulkner: Yes, that's right.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Hippeli: I believe this, your Honor, shows we have the testimony here that the superior officer of the Station Veterinarian at the Presidio ordered him to make an inspection and that pursuant to that order of that superior Army officer he made the inspection. At the time of the making of the inspection he prepared this inspection sheet, that he kept this particular inspection sheet in his possession at all times. The particular lot of eggs which were inspected he identifies as bearing a Nye & Nissen label, as bearing a Department of Agriculture stamp, as bearing a Veterinary Corps stamp. The preceding exhibit, namely, Exhibit No. 53 for Identification, the witness testified that he saw that exhibit in the presence of the lot down there, that exhibit has not been offered for [425] identification, but it is the invoice of Nye & Nissen, it is the false testimony upon which a substantive count is based. I believe the evidence is admissible at this time. It is not proof of the entire transaction but it is some proof of the transaction. I submit the objection.

Mr. Faulkner: The contents of the document have been fully testified to. Under the Internal Revenue Law, and under the Prohibition Law an agent of the Government kept a record of things that he did. He would refresh his recollection. That didn't make those booklets or pamphlets of writings official documents and automatically without further evidence of their authenticity admissible into evidence. In other words, we submit when a

(Testimony of Lt. Col. Pearl Hugh Hand.)

man refreshes his recollection from a document he is permitted to use that. The defendant, in turn, after he has inspected it, may introduce the document in evidence to confuse him in relation to his confusions, but they can't have the witness testify to what he did with a memory refreshed and put the document in then. We submit that violates the rules of evidence that obtain in this court.

Mr. Pratt: This is more than a memorandum to refresh his recollection. It is an official document.

Mr. Faulkner: We submit the witness just said it is a document from his personal files.

The Court: What do you mean when you state this document you had in your personal files, what did you mean? [426]

A. It was prepared at the direction of higher authority and in the company of the Federal Bureau of Investigation agents it was to be retained by me until such a time as it was called for by higher authority.

The Court: At this time I would overrule the objection. It may go in.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 55 in evidence.)

Mr. Hippeli: Next the Government desires to offer for identification United States of America, War Shipping Administration, South Atlantic Steamship Line, Williams-Dimond & Company, Agent, Purchase Order No. WD 3184, dated April

(Testimony of Lt. Col. Pearl Hugh Hand.)

21, 1944, purchase order issued to Nye & Nissen, calling for the delivery of 45 cases of fresh whole eggs, FDA inspection required, and delivery on April 26th to the Cape Pillar.

(The document was marked U. S. Exhibit 56 for Identification.)

Mr. Faulkner: May I see that? You are offering it for identification?

Mr. Hippeli: That's right, Mr. Faulkner. The Government next offers for identification a Nye & Nissen invoice to USA W.S.A., South Atlantic Steamship, Williams-Dimond & Company, General Agents, dated April 25, 1944, and there are two items, including 45 cases of eggs, medium processed AA, in the sum of $563.30, and in the lower left-hand corner "WD314, 88 Cape Pillar, Pier 34."

(The document was marked U. S. Exhibit 57 for Identification.) [427]

Mr. Hippeli: The Government next offers for identification a Veterinary Corps Inspection of Eggs sheet dated April 26, 1944, signed by the initials P.H.H.

(The document was marked U. S. Exhibit 58 for Identification.)

Mr. Hippeli: Q. Showing you Exhibit 58 for Identification, I will ask you inspected and graded a lot of eggs on the steamship Cape Pillar.

A. Yes.

Q. At what time?

A. The date was 4/26/44.

(Testimony of Lt. Col. Pearl Hugh Hanft.)

Mr. Faulkner: Just a moment. We have the same objection we had this morning. We object to him refreshing his recollection from a document written by him, unless he states that he has no recollection on the subject without the aid of the document.

Mr. Hippeli: Q. Do you know the exact date of your inspection on the Cape Pillar, independent of your inspection sheet? A. No.

Q. Do you know the exact number of cases graded, regardless of your inspection sheet?

A. No.

Q. Do you know the grades of the cases of eggs graded without your inspection sheet? A. No.

Q. Referring to your inspection sheet, will you tell us the date of your inspection, please?

A. April 26, 1944.

Q. Where was the inspection made?

A. On the U.S.S. Cape Pillar. [128]

Q. Where on the Cape Pillar?

A. In a passageway adjacent to the refrigerating room.

Q. Do you recall where the Cape Pillar was?

A. No.

Q. Was it in the Bay around the San Francisco Bay area? A. Yes.

Q. How many cases of eggs were examined by you? A. 3.

Q. How many cases of eggs did you find on the Cape Pillar? A. 45.

Q. Did you observe whether there were any markings on these 45 cases of eggs?

A. Yes; 35 were stamped with U. S. Department of Agriculture stamp, graded Grade AA, dated 4 21 44.

Q. That was 35 of 45 cases. Were there any stamps on the remaining ten cases?

A. No. There was a "P", a purple "P" on the label.

Q. What does that "P" indicate?

A. Pee-wee.

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness.

The Court: If he knows he may answer.

Mr. Faulkner: How could he know what a "P" on a label could mean if he didn't place it on there?

The Court: The "P" was on there, and he indicated it was Pee-wee.

The Witness: I opened the case and Pee-wees were inside.

Mr. Faulkner: Well, that might mean process, Petaluma pack, anything. He says it means "Pee-wee." [429]

The Court: All right, you can cross examine and let the jury determine.

Mr. Faulkner: I know, but he doesn't know.

Mr. Hippeli: Q. Did these ten cases marked with the letter "P" bear any Government stamp?

A. No. [429-a]

Q. Did you grade certain of these cases?

A. Yes, I graded three of the thirty five.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Will you tell us what cases were graded and what was the result of your gradings?

Mr. Faulkner: Same objection, incompetent, irrelevant, immaterial, and hearsay as to the defendants, and no foundation was laid, that the eggs came from Nye & Nissen or that any particular defendant on trial had anything to do with the preparation of the eggs or the delivery.

The Court: He said the foundation has not been laid in this, that it has not been disclosed yet that these cases of eggs came from Nye & Nissen.

Mr. Hippeli: Q. Did each of these forty-five cases of eggs bear a Nye & Nissen label?

A. Yes.

Mr. Hippeli: This witness has testified that he saw forty-five cases of eggs down there, each of which bore a Nye & Nissen label.

The Court: That was not established before. He objected because a proper foundation had not been laid.

Mr. Hippeli: Pardon me, your Honor.

The Court: Proceed.

Mr. Hippeli: Q. Did you grade one of these cases? A. Yes, I graded three.

Q. Will you tell us which cases you graded and give us the results of the grading? [430]

Mr. Faulkner: Same objection, your Honor. The connection of any defendant on trial here has not been shown and no foundation has been laid in this regard to tie this transaction to any individual defendant here on trial.

(Testimony of Lt. Col. Pearl Hugh Hand.)

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Will you answer the question, please?

A. I selected three cases of the thirty-five stamped U. S. Grade AA, with the date stamp 4/26/44. They had a green label on them marked "Biddy Eggs." On a percentage grading, an aggregate of the three cases, I found that there were 37.6 U. S. Grade AA, 24 U. S. Grade A, 27.3 U. S. Grade B, 8 U. S. C, 2.6 Checks, and 3 per cent Loss. There were 68.3 per cent of the eggs that weighed below the medium grade.

Q. What was the weight of the eggs which you weighed?

A. They weighed between 16 and 19 ounces.

Q. What was the Consumer weight grade? Were they Medium, Small——

A. They graded the small Grade B.

Q. I will show you U. S. Exhibit No. 45 for Identification and ask you to examine that, please. (Handing a document to the witness). Does that bear your initial?

A. Yes, it does, my handwriting.

Q. Did you find that label on the Cape Pillar at the time of this inspection?

A. Yes, I was present when it was signed by W. Troy, the chief mate of the Cape Pillar. [431]

Q. Is this your initial?

A. That is correct.

Q. Is that your writing under the intial?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. That is correct.

Q. What date is that? A. 4/26/44.

Mr. Hippeli: At this time the Government offers U. S. Exhibit 45 for Identification into evidence.

Mr. Faulkner: We object to it upon the ground no foundation has been laid that any individual here on trial is connected in any way, shape, manner or form with the shipment of eggs or the eggs in that box, that they saw it prepared, knew of the existence of the order or the delivery of the order, or participated in any way in the delivery of those eggs to the pier.

Mr. Hippeli: I think this objection is similar to the others. We have the testimony of Colonel Hand that he arrived at the ship, he saw cases bearing this particular label, that he took the label off the cases, and that this is the label he took off those cases.

Mr. Faulkner: May I ask the witness a question about the label?

Q. Colonel, in the year 1944 it was the practice, was it not, to ship eggs in second-hand cases? Isn't that right?

A. It all would depend on the order.

Q. You have seen literally thousands of cases in which eggs were packed in the year 1943 and 1944, haven't you? A. Yes.

Q. You have seen thousands of cases in the plant of Nye & Nissen, haven't you? A. Yes. [432]

Q. And you have seen thousands of cases in the plant of Nye & Nissen that had a label similar

(Testimony of Lt. Col. Pearl Hugh Hand.)

to that of some other company on, have you not?

A. I don't understand your question.

Q. I mean a printed label of some other company? A. No.

Q. North, south, east and west?

A. I have not.

Q. You go into any egg plant today or for the last three years and you will find case after case, isn't that correct?

The Court: Just a moment. Read the question, Mr. Reporter.

Mr. Faulkner: Withdraw it, your Honor.

Q. Isn't it a fact, Colonel, that in any egg plant today, and in 1944, the egg packers were dealing in second hand cases and they would be in their plants with other companies' label on them.

A. That is correct.

Q. From an inspection of that label alone, Exhibit No. 45, all that you know is that you would assume that it came from Nye & Nissen, isn't that correct?

A. I took it off the end of a case on the boat.

Q. On a boat?

A. On the boat, the USS Cape Pillar.

Q. Of your knowledge do you not know where the eggs came from, do you?

A. They came from Nye & Nissen.

Q. How do you know?

A. I saw the delivery invoice.

Q. Is that the basis of your statement that you knew it came from their plant?